

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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UNITED STATES OF AMERICA,

Appellee

v.

RUBEN DARIO ROLDAN

Appellant
-----x

76-1113

APPENDIX TO BRIEF FOR
APPELLANT RUBEN DARIO ROLDAN

Appeal From A Judgment
Of Conviction In The
United States District
Court For The Southern
District Of New York

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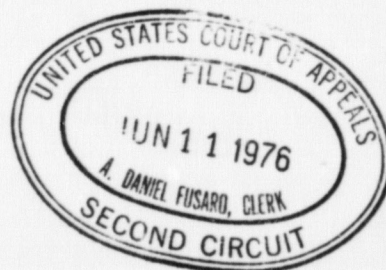


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this afternoon. I don't suspect it will take the government more than five minutes to put in both statements.

THE COURT: All right. We will give them a recess.

(In open court.)

THE COURT: We will have a recess, and we will call you back when we are ready to proceed. Please do not discuss the case in the meantime.

(The jury left the courtroom.)

MR. CAREY: Your Honor, the government calls Assistant United States Attorney James Nesland.

MR. FABRICANT: Your Honor, if there are any other witnesses at this motion to suppress, I ask that they be excluded from the courtroom.

THE COURT: Wait a minute, now. This is a motion to suppress?

MR. FABRICANT: This is a hearing on a motion to suppress the statements of Beatrice Gonzalez; at least I assume it is.

Is that true, Mr. Carey?

THE COURT: I am just trying to make a record, Mr. Fabricant, so we can proceed.

As I understand it, this is a motion to

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suppress on behalf of Beatrice Gonzalez for certain statements allegedly made by her. Does the government concede that there were statements made by her?

MR. CAREY: Yes, your Honor.

THE COURT: All right. That was your case. You are the one who was moving, and you have the burden of proof. Now, the stipulation has been entered that there was a statement made. Now we proceed with the government's response.

MR. CAREY: You mean the defendant's cross examination?

THE COURT: No. You are the government. You are the respondent. He is the petitioner. You have stipulated that there was a statement taken and now you have to show that it was validly taken.

MR. CAREY: Yes, your Honor. I want the record to reflect that Mr. Nesland took a statement from Mr. Jacobs' client Ruben Roldan and we can question him about those.

THE COURT: Do you want to inquire into both statements at the time? All right, and then I will use the testimony as I see it.

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J A M E S N E S L A N D, called as a witness
by the government, being first duly sworn,
testified as follows:

DIRECT EXAMINATION

BY MR. CAREY:

Q Mr. Nesland, you are an assistant United
States attorney in the Southern District of New York,
are you?

A Yes, I am.

Q And you were on duty on October 5, 1974,
is that correct?

A Yes, I was.

Q And on that date did you have occasion to
take statements --

MR. CAREY: Withdrawn.

Q On that date did you have occasion to inter-
view two individuals known to you as Beatrice Gonzalez
and Ruben Dario Roldan?

A Yes.

Q Did you interview them simultaneously?

A No.

Q Directing your attention to your interview
of Beatrice Gonzalez, was anyone else present during
the interview?

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Nesland-direct

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A Someone else was present. I don't recall
who it was.

Q And do you speak Spanish?

A No, I did not.

Q Did Beatrice Gonzalez speak English?

A Not to my knowledge.

Q Did you continue your interview through an interpreter?

A Yes.

Q Did you make any records of that interview?

A Yes, I did.

MR. CAREY: Your Honor, may the record reflect that Mr. Nesland has copies of --

THE WITNESS: Form No. 306.

Q And is the document which you are holding now the form which you utilized at the time you interviewed Beatrice Gonzalez?

A It was the general form that was utilized,
that's correct.

Q And does that form reflect whether or not
an interpreter was present?

A Yes, Norma Seltzer. She happened to be present for both of them, Mr. Roldan's and Beatrice Gonzalez'.

1 mppl Nesland-direct 5947

2B 2 Q What if anything, Mr. Nesland, did you say to

3 Beatrice Gonzalez during the rights portion of the inter-

4 view?

5 A I first identified myself. I told her that she

6 was the subject of an indictment; she had been arrested on

7 the basis of an indictment; that it charged her with a

8 conspiracy to import and distribute cocaine.

9 I then told her, although I notice that the

10 Form 306 reflects the standard typewritten portion of it,

11 in fact I informed her that she would be taken before a

12 United States District Judge on that particular occasion --

13 I believe it was Judge MacMahon, although I would have to

14 check, but I believe Judge MacMahon or another judge was

15 sitting on that particular day, to hear bail applications,

16 and I advised her that she would be taken before a United

17 States District judge to have bail fixed in her case.

18 I asked her if she understood that, and she replied that

19 she did.

20 MR. FABRICANT: It is Mr. Nesland's testimony

21 that he read to Miss Gonzalez from Form 306. I would like

22 the record to reflect that.

23 THE WITNESS: I don't always read these.

24 I generally use these as a guideline. I don't read them

25 precisely as they are here. I may use this as a guideline

1 mpp2

Nesland-direct

2 But I ask the questions that are on here. I asked her all
3 the questions that are on here. I told her that she had
4 a constitutional right to refuse to answer any question
5 I asked her. I asked her if she understood that. She
6 indicated that she did. I told her that she had an
7 absolute right to remain silent, and if she chose to
8 answer any question, any response she made to me in
9 response to any question I asked her would be used against
10 her at any time in court or elsewhere. I asked her if she
11 understood that. She said she did.

12 I told her she had a right to consult an
13 attorney and to have an attorney present while I inter-
14 viewed her and while I asked her questions. I asked her if
15 she understood that she had that right, and she said she
16 did.

17 I asked her, or I told her that if she did not
18 have funds to obtain an attorney, an attorney would be
19 appointed to represent her, and she would not have to
20 answer any questions unless an attorney was appointed and
21 he had an opportunity to consult with her, and I asked her
22 if she understood that, and she said she would have to have
23 an appointed attorney because she did not have the funds
24 to retain her own attorney.

25 I then asked her if she would continue on with

1 mpp3

Nesland-direct

2 questions and answers in the absence of her attorney. She
3 said she would.

4 I asked her if she would give me her version
5 of the facts and also any background of any questions I
6 asked her. I asked, "Do you understand I want to continue
7 with the questions?" She said, "Yes."

8 Q Mr. Nesland, after that did you take what I
9 would characterize as a pedigree of the background of
10 Beatrice Gonzalez, and then subsequently did she make a
11 statement to you?

12 A There's a pedigree here, and there's also notes
13 of the conversations I had with her. Those are not questions
14 and answers. Those are notes that I took while she was
15 talking in response to questions.

16 The same is true with respect to Mr. Reuben
17 Dario Roldan, whom I interviewed immediately after I talked
18 with Beatrice Gonzalez.

19 MR. CAREY: Your Honor, if Mr. Jacobs would
20 like, I will go through these questions concerning Mr.
21 Roldan in a general way.

22 THE COURT: Well, it would seem to me that we
23 are ruling on admissibility. If they are admissible, I
24 don't see that it adds anything to read them.

25 MR. CAREY: No, your Honor. I meant asking

1 mpp4 Nesland-direct

2 questions about the second defendant. If necessary, I
3 shall do so.

4 MR. JACOBS: Your Honor, Mr. Nesland says he
5 asked --

6 THE WITNESS: I told -- I followed exactly the
7 same procedure with Mr. Roldan that I had followed with
8 Beatrice Gonzalez.

9 MR. JACOBS: We don't have to go through the
10 questions again.

11 MR. CAREY: All right.

12 I have no further questions.

13 CROSS EXAMINATION

14 BY MR. FABRICANT:

15 Q Mr. Nesland, do you have any written notes or
16 memoranda of your conversation with Beatrice Gonzalez
17 other than this Form 306?

18 A No.

19 Q I would like to look at your copy.

20 A Surely.

21 Q Mr. Nesland, I see handwriting on this document.
22 Is all that handwriting your handwriting?

23 A I think other than a couple of signatures,
24 it is.

25 Q For example --

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Nesland-cross

the new building. I can't recall whether or not -- I believe it was the old building, the third floor of the old building.

Q And that was just a few minutes before she was supposed to be taken before a judge and have bail set?

A Not a few minutes, no. If I am right, there were maybe 11 or 12 or maybe more defendants arrested that day, and the judge had set -- I believe it was Judge Weinfeld, I recall, had set a certain time period for all the defendants.

Q But did you tell Beatrice Gonzalez, "In a few minutes you will be taken before a United States Judge, who will fix bail in your case"?

A I might have told her in a few minutes. I believe I told her four-thirty. I don't recall now.

Q You don't recall?

A I would have told her what the facts were with respect to when she was going to be brought before Judge Weinfeld.

Q But this document which you rely on says, "In a few minutes"?

A That's right.

Q And in this building is located the Legal Aid Society; is that not correct?

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Nesland-cross

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2 A Right.

3 Q And, of course, a judge has the right to appoint
4 a lawyer for a defendant who is indigent; is that correct?

5 A That's correct.

6 Q And is it not correct that after Beatrice
7 Gonzalez stated that she wanted an appointed lawyer,
8 after you told her that she had a right to an appointed
9 lawyer and had a right not to answer any questions before
10 the lawyer was appointed, that you continued with question-
11 ing and subsequently received a statement from her?

12 A That is correct.

13 MR. FABRICANT: I have no further questions,
14 your Honor.

15 THE COURT: Do you stipulate that the inter-
16 preter would testify that she made a correct interpretation
17 of the questions put to her and the answers given by Beatrice
18 Gonzalez?

19 MR. FABRICANT: One second, please, your Honor.

20 (Pause.)

21 MR. FABRICANT: Your Honor, it is unfortunate
22 that Mr. Nesland has testified to things outside of this
23 document, and his memory of these things that Beatrice
24 Gonzalez might have said or he might have said to her might
25 have been different from the interpreter's memory.

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Nesland-cross

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THE COURT: If you have one, I would appreciate it.

Now we will get on to Mr. Jacobs' case.

CROSS EXAMINATION

BY MR. JACOBS:

Q At the time my client, Mr. Roldan, was examined by you, who else was in the room?

A Mr. Vizcarrondo was in the room for a while and then at the end he left and Mr. Garnett came into the office.

Q Was there also an agent in the room?

A I don't have the agent's name there. It's possible an agent could have been in there for part or all of the time.

Q Isn't it the general practice of the United States Attorney's Office when interviewing a prisoner to have an agent or marshal present?

A Only in situations where you have an agent available.

Q You normally don't have a marshall or agent present for security purposes.

A This was held in the security unit. There were marshals, I believe, or agents outside in the lobby of the security unit, that's my recollection, and

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Nesland-cross

5971

2 that the doors were open and we carried on the inter-
3 views of more than one defendant in each of the
4 security unit offices. That's my recollection of
5 how the interviews went.

6 Q Did you ever tell Mr. Roldan, pointing to
7 someone else in the room, that that man was a lawyer
8 and he would represent him?

9 A Pardon?

10 Q Did you ever while interviewing Mr. Roldan
11 point to somebody else in the room and tell Mr. Roldan
12 that that man was a lawyer and would represent him?

13 A No.

14 Q Was Miss Seltzer the interpreter also?

15 A Yes.

16 Q Did you inform Mr. Roldan of what the
17 charges were in the indictment?

18 A Correct.

19 Q Did you tell him how many counts there were
20 against him?

21 A I don't recall.

22 Q Did you tell him he could get 15 years on
23 each count?

24 A Very possibly.

25 Q Did you tell him he might get 90 years if

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pga Nesland-cross

he didn't cooperate?

A I doubt it. It's not my technique.

Q The answer to the last question on the first page, is that the word "Yes."

A Yes.

Q There seems to be an underling of the words "your version of the facts," is that so?

A There is a mark there. I don't know if it was an underlining or not. I don't have a recollection of placing it on there.

Q Was that your handwriting?

A A line?

Q Yes.

A It looks like the same ink. I can't recognize whether that's my line.

Q Briefly looking at the four pages of the statement and from looking at it, tell me whether this interview was broken up into more than one interview? And I call your attention to the fact it is signed by you on the third page, signed in the middle of the fourth page by Mr. Vizcarrondo, I believe, and then signed at the bottom by Mr. Garnett. Does that mean anything to you?

A The reason it is signed on the third page

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Nesland-cross

2 by me is that I always signed it there whether or not
3 it ends there. I usually have the person who is a
4 witness to it sign it at the end of the point in time
5 in which he witnessed the facts being related by the
6 defendant -- that would be Mr. Vizcarrondo.

7 By going over this, I believe what happened
8 was Mr. Vizcarrondo went out or Mr. Garnett came in
9 with a copy of one of the telephone conversation that
10 Mr. Roldan had had with one of the other defendants and
11 for that reason Mr. Garnett remained in the room while
12 I questioned Mr. Roldan with respect to that particu-
13 lar conversation and Mr. Vizcarrondo left. That's
14 my best recollection of what happened. I believe the
15 conversations were in loose-leaf folders and they
16 were brought in by one or the other of those two assist-
17 ants.

18 Q The names you questioned Mr. Roldan about,
19 were those names that were given to you by agents?

20 A To which ones are you referring? More
21 than likely those came out of the indictment.

22 MR. JACOBS: I have nothing further.

23 THE COURT: Are you willing to stipulate
24 the interpretation is the proper one?

25 MR. JACOBS: Yes, your Honor.

Form No. USA 33s-306 p. 1
Rev. 10/28/71

STATEMENT OF DEFENDANT BEFORE ARRAIGNMENT
MADE TO ASSISTANT UNITED STATES ATTORNEY

Date: October 5 1974

Time Interview Commenced: 11:15 a.m. p.m.

Q. My name is James E. Nesland, I am an Assistant United States Attorney. You have been arrested for a violation of 21 U.S.C. §§ 812, 811(a), 811(b)(1)(A), 952(a), 953, 960(a)(1), (b)(1) which relates to Cannabis and distribution thereof '846, 963. In a few minutes you will be taken before the United States Magistrate who will fix bail in your case. Do you understand that?

A.

Q. You have a constitutional right to refuse to answer any of my questions. Do you understand that?

A.

Q. You have an absolute right to remain silent, and if you choose to answer any questions, any statement you do make can be used against you in a court of law. Do you understand that?

A.

Q. You have a right to consult an attorney and to have that attorney present during this interview. Do you understand that?

A.

Q. If you do not have funds to retain an attorney an attorney will be appointed to represent you and you do not have to answer any questions before this attorney is appointed and you can consult with him. Do you understand that?

A.

I would like an appointed lawyer

Q. Understanding your rights as I have explained them, do you want to give me some information at this time about your background and your version of the facts?

A.

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2 THE CLERK: Mr. Leon Washor is present,
3 Mr. Levenson and Mr. Marshall and Mr. Drezin are present.
4 Mr. Drezin will cover for Mr. Tirelli.

5 THE COURT: Mr. Sarmiento and Mr. Gill,
6 your lawyers are not present, and Mr. Koehler has agreed
7 to cover for them. Is that satisfactory to you?

8 DEFENDANT SARMIENTO: Yes, sir.

9 DEFENDANT GILL: Yes, sir.

10 THE COURT: I am prepared to rule on the
11 motions to suppress made by the defendants Gonzalez and
12 Roldan.

13 The facts clearly indicate that in reference
14 to the defendant Beatrice Gonzalez, she, at the time of
15 the incident, was approximately 26 years of age, with
16 no experience in this kind of questioning by authorities,
17 that having been established during the course of the
18 hearing, and at the time of the questioning she was in
19 the security section of the United States Attorney's
20 Office where there were marshals and attorneys around.
21 She was under arrest and not free to leave. At the time
22 she spoke no English and the interpreter's services were
23 necessary in order to interrogate her.

24 When asked, in substance, did she want an
25 attorney, she replied, "I would like appoint attorney."

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6015

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2 Immediately following this, she was asked,
3 "Understanding your rights as I have explained them, do you
4 want to give me some information at this time about your
5 background and your version of the facts?"

6 As far as the court is concerned, she was
7 not given any time to reflect on that because there im-
8 mediately follows the questions I alluded to before. She
9 then gave some statement to the assistant United States
10 attorney, and it is that statement which she has moved
11 to suppress.

12 The court finds that there was no compliance
13 with the strict standards set down for the Miranda case.
14 She was denied counsel at the time when counsel was
15 requested. While in the beginning of this hearing the
16 burden of proof was on the petitioners, it shifted to
17 the government, and at that point in time it was the
18 government's burden of proof to show that she had
19 understanding, knowingly and willingly given up her con-
20 stitutional right to have a lawyer at every stage in
21 the proceeding.

22 This burden the government has failed to
23 sustain and therefore her motion is granted and that
24 statement is suppressed.

25 In reference to the defendant Roldan, however,

1 mpa

6016

2 the court finds that there was no violation of the de-
3 fendant's constitutional rights. He was apprised of
4 his rights. He clearly indicated that he understood
5 what those rights were, and then in answer to that same
6 last question, "Understanding your rights as I have
7 explained them to you, do you want to give me some in-
8 formation at this time about your background and your
9 version of the facts?" he answered yes.

10 I find that the government hasn't violated
11 the standards of Miranda, and under the circumstances
12 I deny the motion made by defendant Dario Roldan to
13 suppress the statement.

14 Now, getting to the letter that we were talk-
15 ing about which the government has offered to intro-
16 duce into evidence, I would like to know from the de-
17 fendants whether they would be willing to stipulate that
18 if the United States attorney from the District of
19 Texas were called he would testify that he received that
20 letter during the regular course of the conduct of his
21 office.

22 MR. DIXON: Your Honor, is that that Kasdin
23 & Detsky letter? I believe I made my objection --

24 THE COURT: Mr. Dixon, I am not asking
25 what you believe. I am asking if you are willing to

1 mpa Darias-direct 6837

2 MR. CAREY: I have no further questions
3 of this witness, your Honor.

4 MR. JACOBS: I don't know if your Honor
5 wants to interrupt now, but Mr. Nesland is here.

6 THE COURT: Is anybody going to examine him
7 at all?

8 MR. CARLTON: I am.

9 THE COURT: Mr. Carlton is the only one?
10 Well, I imagine that will take a little time. We
11 will start in with Mr. Jacobs, if you don't mind.
12 Is that satisfactory to all parties?

13 MR. CARLTON: Yes, sir.

14 THE COURT: All right. You may step
15 down. You will be called again.

16 (Witness temporarily excused.)

17 MR. CAREY: Government calls James Nesland.

18 J A M E S N E S L A N D, called as a witness
19 by the government, being first duly sworn, testi-
20 fied as follows:

21 DIRECT EXAMINATION

22 BY MR. CAREY:

23 Q Mr. Nesland, by whom are you employed?

24 A United States Attorney's Office in this
25 district.

1 mpa Nesland-direct 6838

2 Q For how long have you been so employed?

3 A Approximately three years.

4 Q Directing your attention to October 5, 1974,
5 at approximately 12:30 p.m., did you interview a person
6 who identified himself by the name of Ruben Dario Roldan?

7 A Yes, I did.

8 Q Who, if anyone else, was present during the
9 course of that interview?

10 A The interpreter, Normal Seltzer, was pre-
11 sent. For the first major portion of the interview,
12 I believe Paul Viscarrondo, another assistant United States
13 attorney, was present, and Mr. Viscarrondo had to leave
14 and for the latter part of it, Mr. Garnett, from the
15 United States Attorney's Office also, was present.

16 Q What, if anything, did you tell -- would you
17 recognize Ruben Dario Roldan if you saw him again?

18 A Yes.

19 Q Will you tell the court whether or not you
20 see him in this courtroom?

21 A Yes, he is sitting behind Mr. Warburgh in the
22 blue suit, blue jacket.

23 MR. JACOBS: The identification is stipulated.

24 Q What, if anything, did you tell Mr. Roldan --

25 MR. JACOBS: Your Honor, I will stipulate

1 mpa Nesland-direct 6839

2 that he was warned of his rights.

3 MR. CARLEY: Thank you.

4 A I also, in addition to his rights, had him
5 speak with the interpreter in advance of any questions or
6 answers and asked him, after he had spoken with the
7 interpreter for a few minutes whether or not they under-
8 stood each other, and he said that he did understand
9 Mrs. Seltzer.

10 Q Was the interview conducted in English or
11 in Spanish?

12 A Both. I spoke to Mrs. Seltzer in English.
13 She spoke to Mr. Roldan in Spanish. He spoke to her
14 in Spanish and she translated back in English to me.

15 Q Did Mr. Roldan speak any English during any
16 part of the interview?

17 A I don't recall if he could speak any English.

18 Q What, if anything, did Mr. Roldan tell you
19 about his background?

20 A He told me that he had been in the United
21 States for I believe a few years at that time, that he
22 had come in from Colombia as a tourist. He was
23 registered as a tourist alien. He told me that he
24 had come from near Medellin, Colombia, where he and his
25 family had a farm, a very small farm. I asked him

1 mpa Nesland-direct 6840

2 the size of the farm. He told they had a few cows,
3 a few chickens, a few pigs. I recall I asked him the
4 date on which he came to America, but I don't recall
5 the date. He did tell me.

6 Q I show you Government's Exhibit 514A for
7 identification. Does that refresh your recollection
8 with respect to the date he told you he entered the
9 United States?

10 A Yes. He said December 22, 1968.

11 Q What, if anything else, did he tell you
12 about his background?

13 A Well, he told me that after he had come to
14 the United States he had been employed as a window washer
15 at the Apex Window Washing Company. I have the address
16 down here. 1430 Broadway, Manhattan. I asked him
17 what he did there and he said he cleaned windows part
18 time, in apartments, and that was about all he did.

19 I then asked him where he lived. He told
20 me that he presently lived in New Jersey, in Union City,
21 New Jersey, at 402 17th Street, in an apartment there.
22 He lived there for seven or eight months as of October,
23 1974, and prior to that he lived in the Bronx at 1820 Harri-
24 son Avenue and he lived at that location in the Bronx
25 for approximately three years.

mpa

Nesland-direct

6841

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2 Q Did he tell you the apartment number in which
3 he lived in New Jersey?

4 A Yes, apartment 4L.

5 Q Did he indicate that he was known by any
6 other name than his full name?

7 A I asked him whether he was called Ruben or
8 Dario, since I didn't know which. I figured he wouldn't
9 be known by his last name. He told me he was called
10 Dario.

11 Q What, if anything else, did he tell you
12 about his background or any questions which you asked
13 him that day?

14 MR. CARLTON: Your Honor, before Mr. Nesland
15 answers this, I make the same objection as I did on
16 previous occasions regarding this, and I ask that the
17 court instruct the jury that any statements made, if in
18 fact found to be made, would be admitted only as against
19 Ruben Dario Roldan and not against any other of the de-
20 fendants.

21 THE COURT: That is the law and that is
22 the way you will apply it.

23 Q Can you answer the question?

24 A I asked him about some of the people he
25 named.

mpa

Nesland-direct

6842

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2 Q Did he tell you anything else about himself
3 during the course of the interview you had with him?

4 A I don't understand the statement.

5 THE COURT: Have you exhausted your
6 recollection of the interview?

7 THE WITNESS: I don't understand what he
8 is asking me.

9 THE COURT: What else did he tell you
10 at that time?

11 Q After you asked him some questions about
12 background, did you ask him some questions which did not
13 necessarily have to do with the background portion of the
14 interview?

15 A Correct. I did.

16 Q And what, if anything, did he tell you during
17 the course of that portion of the interview and what,
18 if anything, did he tell you?

19 A I asked him if he knew Marconi Roldan.
20 He said he did, that Marconi Roldan was his brother.

21 MR. CARLTON: Your Honor, I am going to
22 object to this. I think we have argued it previously
23 with regard to other matters.

24 THE COURT: Objection overruled.

25 A I asked him if he knew Bernardo Roldan and

1 mpa Nesland-direct 6843

2 he told me he did, that Bernardo Roldan was his
3 uncle, that he lived in Colombia, but he had been to New
4 York within the last five or six months.

5 Q Referring to whom?

6 A Bernardo Roldan.

7 Q Referring to the exhibit before you, are
8 those your notes?

9 A These are the notes that I took during the
10 course of the interview.

11 He told me that he knew Bruno Bravo and that
12 he had been with him on one occasion.

13 MR. CARLTON: Same objection.

14 THE COURT: Same ruling.

15 A I asked him if he had ever obtained money
16 orders. He told me that he received money and that
17 he had obtained money orders on occasion, usually three
18 or four hundred dollar money orders, at that time.
19 He told me he didn't know what they were for but that he
20 had been paid \$70 or \$80 to buy these money orders.

21 I then questioned him concerning a conversa-
22 tion and asked him if he recalled having a conversation
23 with anybody over the telephone --

24 MR. CARLTON: Your Honor, I am going to ob-
25 ject again and I must approach the bench on this.

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Nesland-direct

6844

(At the side bar.)

THE COURT: It's very clear. I have ruled that as long as the defendants are not present here in court he can talk about them. But he is down at the end of it.

MR. JACOBS: This is the last item, I believe.

THE COURT: This is the last question on this.

What does he say about this, Mr. Jacobs?

MR. CAREY: He is going to say Roldan said he only had -- he is going to say that he asked Ruben Roldan if he ever had any conversations with people, and he asked Ruben Roldan about the substance of the conversations and he said, with respect to that conversation, he could only have said that he had one Don Quixote book. The relevance of that may be hard to appreciate, your Honor, but the defendant used the expression "I will bring over two Don Quixote books" during the conversations in evidence, from which the government will argue that the jury may infer that it was in reference to narcotics.

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Nesland-direct

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2 MR. CARLTON: My objection is that this state-
3 ment is only admissible against Reuben Dario Roldan.
4 However, bringing in this statement in a single trial
5 involving all of these defendants, and especiall my own
6 client, it is being used against all of them, because they
7 are now tying in this Reuben Dario Roldan, who is sitting
8 in this courtroom with all the rest of them in that same
9 conversation, and this would apply to conversations men-
10 tioning Bruno -- however, it is clear that it is not being
11 used just against this one individual. It is being used
12 against everyone, and Mr. Carey just indicated he is going
13 to argue this in his closing argument.

14 MR. CAREY: No. I did not say that.

15 THE COURT: I don't follow that reasoning, so
16 I will overrule the objection with an exception to every
17 defendant, since Mr. Carlton is the spokesman for all of
18 them at this point.

19 (In open court.)

20 BY MR. CAREY:

21 Q Do you recall my last question, Mr. Nesland?

22 A Yes.

23 Q You started to say that you had discussed a
24 conversation --

25 A I asked him if he recalled having a conversation

1 mpp2

Nasland-direct

2 with anyone in which he had offered or been asked for two
3 Don Quixote books, and at first he said, "No."

4 I said, "Are you sure you never had any
5 conversation with anybody about two Don Quixote books?"

6 He said, "I only had one Don Quixote book,"
7 and that's all he said about that.

8 Q Did he say anything else during the course of
9 that interview which you conducted with him?

10 A Not with respect to that, no.

11 MR. CAREY: I have no further questions of this
12 witness, your Honor.

13 THE COURT: Members of the jury, we are going
14 to ask you to suffer with us for a few more minutes,
15 because one of the lawyers is actually engaged in another
16 case and has to be back there at 2 o'clock, so I would
17 appreciate it if you would go along with this.

18 I don't know if anyone else has any questions --

19 MR. TIRELLI: I have no questions.

20 MR. CUTLER: I have none.

21 MR. MICHAEL WASHOR: I have none.

22 MR. DIXON: No questions, your Honor.

23 THE COURT: All right, Mr. Jacobs.

24

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pp3

Nesland-cross

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CROSS EXAMINATION

BY MR. JACOBS:

Q I will attempt to be brief, Mr. Nesland.

Mr. Nesland, without having looked at your notes, did you have a recollection of this conversation, which took place almost a year and a half ago?

A I recalled some of it, yes.

Q But prior to testifying, you referred to your notes?

A Certainly.

Q How many times?

A Three or four.

Q Now, you said Mr. Roldan said that part-time he cleaned windows; is that correct?

A That's correct.

Q And with regard to that, did you ask him how much money he earned a week?

A He told me that he earned \$215 a week.

Q Now, you testified that you asked him if he knew Bruno Bravo; is that correct?

A I believe I asked him if he knew Bruno Bravo.

Q And he said he knew Bruno Bravo and had met him once?

A He said he had met him once.

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Nesland-cross

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Q Did you recall that without referring to your notes?

A I don't believe so.

Q Would you look at your notes and see if you can find what in your notes refreshes your recollection that he said he knew Bruno Bravo?

A The whole thing does -- if you want a full explanation --

Q No. I want you --

A In order to do it, I will have to give you a full explanation.

This refreshes my recollection that I went over the people in the indictment and that Bruno Bravo is the only Bruno in the indictment, and there's a note in here that he said, "I know Bruno."

Q Isn't it a fact that Mr. Roldan said, "Bruno I know of. I was with a Bruno once"?

A That's what my notes say. We were talking about Bruno Bravo, according to my notes.

Q But your notes say "a Bruno Bravo." Is it usual that you ask a witness, "Do you know Bruno Bravo" and he says, "I know a Bruno"?

A I never asked anyone else about Bruno Bravo.

Q Did you question any other witnesses?

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Nesland-cross

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A Well, I would have to see the 306's.

Q You have a regular format that you use when you question them about a case?

A Yes.

Q And you question them about the people in the indictment?

A It's a question of whether I expected them to know a number of the people in the indictment or not. I expected Mr. Roldan to know a number of the people in the indictment.

Q You presented this case to the grand jury, did you not?

A I was present when it was presented.

Q But you were familiar with the facts?

A Not very.

Q Were you familiar with the names of the people?

A I was familiar with some of the names.

Q Do you recall whom else you questioned besides Mr. Roldan on that date?

A I questioned Beatrice Valencia. I believe I questioned -- I don't know if it was on that date. I believe I questioned Mr. Velez. It was either on that date or another date that I interviewed Mr. Hernandez, Omar Hernandez.

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Nesland-cross

Q Could you tell me --

A I believe I interviewed Marconi Roldan. I don't know if it was on that date.

Q And did you ask all these people if they knew Bruno Bravo?

A I don't recall whether or not I did, Mr. Jacobs.

Q Can you tell me why you wrote the words "I was with a Bruno once"?

A Do I recall precisely why I wrote it?
No.

Q Is that what Miss Seltzer told you?

A It would be the substance of what she told me. Those are not verbatim notes.

Q Is there anything in your notes that indicates the name Bruno Bravo?

A No. Just "Bruno."

Q Does "a Bruno" -- with a small "a" -- mean to you Bruno Bravo?

A I interpreted it to be that, yes, since I was asking about Bruno Bravo.

Q But this is not your question. This is Mr. --

A That's right.

Q This is Mr. Roldan's answer.

A It is not Mr. Roldan's answer. It is the sub-

1 pp7 Nesland-cross

2 stance of what I was told.

3 Q Now, would you tell us again what Mr. Roldan
4 said about his obtaining money orders?

5 A You mean in full?

6 MR. CAREY: Objection, your Honor.

7 Q You were questioned about that on direct examina-
8 tion, and you gave an answer.

9 A I asked him if he ever obtained money orders
10 for anybody. He said that he had received money and obtained
11 money orders, purchased money orders, usually three or four
12 at a time. They were generally \$1000 money orders, and
13 that he received \$70 or \$80 for doing it, but he didn't know
14 why he was doing it -- he didn't know what the money orders
15 were for.

16 That was the substance of what he told me.

2 17 Q And he said he did it three or four times?

18 A No. He said he got three or four.

19 Q Money orders?

20 A Three or four money orders.

21 Q And that could have been one time or three or four
22 times?

23 A It could have been.

24 Q And they were \$1000 money orders?

25 A That's what I believe he told me.

pp8

Nesland-cross

Q Now, when he said, "I got paid \$70 or \$80," was that the substance of what he said or was that the exact language he used?

A I would say that was the substance of what he said. He was evasive, and I would just try to put down whatever I could that appeared to be what he was saying.

Q You say he was evasive?

A He was evasive.

Q That is your opinion?

A That's my opinion.

Q Did you play this tape for him about the Don Quixote?

A I don't believe I did. I think I had the conversation read to him.--

Q Yes or no --

A -- by Miss Seltzer.

Q Mr. Nesland, I asked you whether you played the tape. I didn't ask you --

A No. I don't recall that I did.

Q But you recall that Miss Seltzer read the transcript to him?

A Yes.

Q And did she read the transcript before you asked any questions about the transcript?

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Nesland-cross

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A No.

Q First you asked him about it?

A If he recalled the conversation.

Q And he said he didn't?

A He said he didn't.

Q And then it was played to him -- excuse me --
Miss Saltzer read it to him in Spanish, and he said that he
only had one Don Quixote book?

A Right.

Q Did he say the book was in his house or anything
like that?

A My recollection is that he may have said some-
think like, "I only have one Don Quixote book in my house,"
or something along that line. It may have been that he
only said, "I have one Don Quixote book." I don't recall.

Q And the way this happened, you are asking him
the question, and then there is his denial, and then Miss
Saltzer reading the transcript, and then his making a reply,
"I have only one Don Quixote book"?

Is that your recollection, or did you get that
from the --

A That's my recollection after reading the notes,
that I asked him about it. He denied that he had any such
conversation. I then had her read that conversation to him,

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Nasland-cross

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and he said, "I only have one Don Quixote book."

Q Is there anything in your notes indicating Miss Seltzer read the transcript?

A No.

Q Is there anything in your notes that says Mr. Roldan denied anything about Don Quixote, at any point?

A I have one note that does, yes.

Q Did Mr. Roldan offer to show you the Don Quixote book?

A I don't believe so.

Q Did you question him any further about the Don Quixote book?

A No. Then I switched to another subject, another conversation.

Q During this conversation you took full notes of whatever you thought was pertinent that Mr. Roldan said; is that right?

A I took notes.

MR. JACOBS: Nothing further.

THE COURT: Mr. Warburgh?

MR. WARBURGH: No questions.

MR. KOEHLER: No questions.

MR. CARLTON: No questions.

MR. CAREY: I have no redirect, your Honor.
(Witness excused.)

1 mpp2

2 that?

3 MR. JACOBS: No.

4 THE COURT: Who is the next witness?

5 MR. JACOBS: He intended calling Mr. Nesland,
6 and I object to Mr. Nesland testifying until the inter-
7 preter is here, until I can question the interpreter on
8 what the words were.

9 THE COURT: All right. The interpreter will
10 be here shortly, won't she?

11 MR. CAREY: No, your Honor. I believe she is
12 on vacation. I believe Mr. Levenson --

13 MR. LEVENSON: I believe she said she would
14 return on the 1st or today or something. I think she
15 has returned by now.

16 THE COURT: Well, can we do something else
17 until we find that out? Have we got any other witnesses?

18 MR. CAREY: We are down to the last hundred,
19 your Honor.

20 MR. JACOBS: Mr. Carey informs me that he in-
21 tended to call Mr. Hoffman to identify my client's voice.

22 MR. CAREY: No. Not to identify your client's
23 voice. To say that the voice in his opinion was the same
24 as the voice in another conversation.

25 MR. JACOBS: Well, I object to that. Mr.

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Hoffman has no special expertise.

THE COURT: He doesn't have to have any. Give him the rules and let him read Rule 8.

MR. WARBURGH: Then why were they played?

THE COURT: Suppose you put somebody on to say it's not the same voice. This is authorized by statute, and the statute says you can do it. Why should I say you can't?

MR. JACOBS: Your Honor, that's the situation, I believe, where somebody heard somebody's voice out of court and wanted to say that's the person. It is not where you have the tapes right here, and the jury can listen to them.

THE COURT: I still think I will allow it.

MR. JACOBS: Then why did we need to play them?

THE COURT: Well, I will read the rule.

The voice exemplar is the one that you hear.

MR. JACOBS: Your Honor, Mr. Carey is saying that Mr. Hoffman is not going to say this is Reuben Dario. He is going to say, "I listened to Conversation 1 and Conversation 15, and this is the same person."

The jury can say that, your Honor. This is not the same situation. Here it is right before the jury.

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1 THE COURT: You are talking rather loudly.
2 I think they can hear your argument better than I can,
3 because it's getting into a little backlash with me.
4

5 I would take this position: that until there
6 is some question made by the defendants that these in
7 fact are the same voices on these tapes, then I will
8 sustain the position, but if there is any questioning of
9 it in any part of the defendant's case that this is in fact
10 the voice of the same person, I then would allow you on
11 rebuttal to produce Mr. Hoffman.

12 MR. CAREY: Your Honor, I believe that would
13 be a fair ruling but for the fact that the question has
14 already been raised on the government's direct case,
15 because there are two Darios who used the name "Dario"
16 and have been identified by witnesses as people they
17 knew by the name of Dario, and Mr. Jacobs on cross-
18 examination pointed that out.

19 THE COURT: Well, until somebody gets up here
20 under oath and says they could be other people, I won't
21 allow this. I will allow it on rebuttal, if that is going
22 to be an issue in the case.

23 MR. CAREY: Mr. Hoffman has told me that the
24 conversations which name a Dario -- all of them are not
25 the same voice and, as Mr. Jacobs has pointed out,

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2 of course, the jury could reach the same conclusion.

3 I could argue in summation that these are the
4 same people. I would have to play during my summation
5 about 10 different tapes.

2 6 THE COURT: Well, if they wanted to hear the
7 tapes they could ask for them. He will argue otherwise
8 and say that on some of these tapes that is not the voice.

9 Of course, you agree that that is so.

10 MR. CAREY: There are some where it is not,
11 but on some the jury will have to listen to them again.

12 THE COURT: If they get to that point, they
13 will.

14 MR. CAREY: But we could avoid the entire
15 situation.

16 THE COURT: No, because you would have the
17 situation where Mr. Jacobs may be mistaken, and we will
18 listen to the tapes.

19 MR. CAREY: But Mr. Jacobs saying that I am
20 mistaken is liable to impress the jury more than saying
21 Mr. Hoffman is mistaken.

22 THE COURT: Well, I will listen to this again
23 on rebuttal.

24 MR. CAREY: Your Honor, despite the fact that
25 the jury has been allowed to listen to these tapes and we

1 pp6

2 have relied upon their evaluation of who the speakers are,
3 the government should not be precluded from the evidence
4 it has offered through Mr. Hoffman that a selected number
5 of conversations have been identified as the same speaker.
6 There is circumstantial evidence which permits the jury to
7 infer that the speaker is Dario Roldan. There is a
8 telephone subscribed in his name, and a man with his name
9 answered it. There are two conversations of that
10 nature, which are a standard, with which Mr. Hoffman
11 compared the other conversations, but without a juxta-
12 position of the standard and the comparing conversations,
13 the jury is, I am afraid, going to flounder, and the
14 government should not be precluded from proving -- the
15 testimony will only take a matter of minutes -- that in
16 fact these conversations in the opinion of one person
17 who has listened to them for that purpose are conver-
18 sations spoken by the same individual.

19 It seems to me, your Honor, that we are just
20 creating a situation where the jury is left without any
21 guidance.

22 THE COURT: Yes, but you are creating the
23 situation where if you did that and thought that you had
24 a right to do that, then what would prevent you from getting
25 up here and getting anybody up here, including Mr. Hoffman,

1 mpp7

2 and saying, "These two are the same, and these six are the
3 same," and going on ad infinitum?

4 MR. CAREY: We are going to do that with
5 regard to Roldan and Gonzalez. The question of where
6 Jorge Gonzalez lived is somewhat unsettled as far as the
7 jury has heard, and all the conversations we have heard
8 in the last couple of days of trial, which had the
9 individual Jorge in them were all conversations of the
10 defendant Jorge Gonzalez, but the only one identification
11 we can make, and it is very remote, is that he was once
12 seen in that apartment during the course of the investiga-
13 tion, in May, I believe, and he also admits having been
14 in that apartment, but because of the Bruton problems,
15 we are forced to redact so much out of his admissions about
16 whom he was speaking to that we feel we have to make a voice
17 identification.

18 We have a witness who is prepared to do that,
19 who spoke to him. Those are the only two defendants --

20 THE COURT: That is a different category, where
21 the person has spoken to him face-to-face, other than that
22 kind of thing you want to do with Dario.

23 MR. CAREY: In the case of Roldan, it must be
24 considered less prejudicial to the defendant, since the
25 inference is still left open as to who this particular

1 mpp8

2 Dario is.

3 THE COURT: This problem with the more than one
4 Dario was brought forth in the beginning of this case by
5 Mr. Jacobs, and therefore, under the circumstances, in
6 this solitary case, I will allow this testimony, Hoff-
7 man's testimony, to be given, with an exception to the
8 defendant Dario.

9 MR. JACOBS: Your Honor, it wasn't brought
10 forth by me. It was brought forth in a conversation
11 played by the government. In the middle of the conver-
12 sation there is a discussion about the other Dario. I
13 did not bring that out.

14 THE COURT: But you brought it to my attention.
15 All right. Even if you didn't, the point of the matter
16 is that there are two different Darios, and this is a
17 unique situation, and under the circumstances I will allow
18 this one exception to it, with an exception to the defendant
19 Roldan.

20 Now we get to the redacted statement. I
21 would like to see the redaction so I know what you are
22 talking about. The things in red are what?

23 MR. CAREY: The sections that the government
24 will ask --

25 THE COURT: You mean that you want in?

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2 MR. DIXON: Your Honor, for him to explain the
3 significance would not be proper at this time.

4 THE COURT: He said that he is going to call
5 another witness and that's it. He is not explaining any-
6 thing at this point.

7 MR. CAREY: The government calls Gustavo
8 Hoffman.

9 G U S T A V O H O F F M A N, recalled.

10 MR. CARLTON: Your Honor, I believe the
11 record will reflect objection to the testimony that is
12 forthcoming as argued at the side bar on behalf of my
13 client as well as all others.

14 THE COURT: Yes. I have ruled on that. As
15 a matter of fact, I think as long as he is here I will
16 avail myself of further interrogation on this witness in
17 this area. This is the same area on which he was called
18 once before, at which time I told you his opinion in this
19 matter is not conclusive on you. You may adopt it or
20 reject it. You make your own conclusion and be bound by
21 your own evaluation as to whether these voices are, in
22 fact, the same persons speaking on two separate occasions.

23 Mr. Hoffman, how long have you been listening
24 to records like this as part of the services you render?

25 THE WITNESS: For several years now, your

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Hoffman-direct

Honor. About three years.

THE COURT: As a result of that, have you, from time to time, made judgments as to whether or not voices which you heard on tapes were made by the same persons?

THE WITNESS: I have expressed an opinion, your Honor, that I thought they belonged to the same person.

THE COURT: Have you ever testified in any court in that area?

THE WITNESS: Not before this trial.

THE COURT: This is the first time you are testifying in this area?

THE WITNESS: That's right.

THE COURT: How many times would you say you formed a judgment as to whether or not the person on two tapes was, in fact, the same person?

THE WITNESS: As far as the tapes that are submitted in this trial, your Honor, many times, because I listened to many, many conversations, and some of the voices are very distinct and have speech patterns that are recognizable.

THE COURT: Is it a fact in listening to these tapes or making the translations which you made -- which

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Hoffman-direct

has nothing to do with what you are doing now, but since you are here I will let you answer this --that you might have to play a tape five, six or seven times before you got the full meaning or perhaps never got the full meaning of any of these tapes? I don't know. Could you tell us about that?

THE WITNESS: Sometimes a tape has to be listened to many more times than that. Sometimes it has to be listened to 20 or 30 times. Particular portions of the tape have to be listened to repeatedly until you get the --

THE COURT: Just as your best judgment in this case, the best opinion you have in this case, suppose you were given the task of simultaneously translating what you heard on the tape to the jury as it went on, could you physically do that?

THE WITNESS: Only about some of the conversations. Those conversations that are very intelligible and slow because you must remember this is a dialogue. An interpretation does not work very well in a dialogue. In the case of most of the conversations I would not be able to do a simultaneous interpretation.

THE COURT: That has nothing to do with this, but Mr. Carlton raised this objection at one time and I wanted to put this in the record.

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Hoffman-direct

Do you want to cross-examine him on voir
dire?

MR. CARLTON: On the last question, yes.

THE COURT: The question as to whether or not
this could have done by simultaneous translation while the
recording was being played.

VOIR DIRE EXAMINATION

BY MR. CARLTON:

Q Mr. Hoffman, in listening to the various tapes
you were able to ultimately understand a great portion of
them; is that true, sir?

A Yes, sir.

Q If the tape were played to the jury, could you
make a consecutive translation, that is after a particular
voice made a statement, could you translate that to the jury
for their benefit?

MR. CAREY: Objection.

THE COURT: I will allow it, but I would like to
know how long that would take when he gets through with that
answer.

A It is a hypothetical question. It would depend
on the conversation. Of course there could be consecutive
translation, but there may be unclear passages which I would
have to listen to perhaps more than once before I could

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Hoffman-direct

interpret them.

MR. CARLTON: After listening to it more than once, which is what you did in order to make up the transcripts, you could then tell the jury what was being said in a translation to English, could you not, sir?

THE WITNESS: Yes, sir.

THE COURT: Compare what happens here with the translations that were given to resist following the tape, how long would you say, in point of time, it would take on consecutive translation, as Mr. Carlton suggests?

THE WITNESS: For some conversations it would take quite a long time, your Honor. I cannot tell you unless we refer to a specific conversation.

THE COURT: You know the tapes that were played, right?

THE WITNESS: Yes.

THE COURT: And say, for the sake of argument, it took 40 hours. I don't know how long it took, but take that as a figure. Would you have an opinion as to how long it would take to do it in consecutive fashion, as Mr. Carlton suggests?

THE WITNESS: Several times that period of time.

THE COURT: Does anybody want to examine him

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Hoffman-direct

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2 Q Did you understand my question?

3 A I think I did.

4 MR. DIXON: No further questions.

5 THE COURT: When did you make the first
6 transcript of these tapes?

7 THE WITNESS: That was around January or
8 February of 1974.

9 THE COURT: After they were made, were they
10 looked over by different people who came and looked
11 at them, to your knowledge?

12 THE WITNESS: Read the transcript?
13 Yes. I understand they were made available to
14 counsel from the moment they were made.

15 THE COURT: How many times were you told
16 by anybody in the case that the transcripts were
17 inaccurate and that they did not reflect what was on the
18 tape, by anybody?

19 THE WITNESS: As far as my transcripts are
20 concerned, I don't think anybody did.

21 MR. CARLTON: Before Mr. Hoffman answers,
22 and with all due respect to the court and I hope you
23 understand, I make it in this light: I would object
24 to that as I think this is the matter before the court
25 and not before the jury.

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2 out the transcripts.

3 MR. JACOBS: I have no objection.

4 MR. CUTLER: Mr. Warburgh said it should
5 be identified.

6 THE COURT: If this jury doesn't recognize
7 Mono's voice on this thing I will jump out the window.

8 Don't show them the transcript at this time.

9 MR. CARLTON: I object to this entire
10 procedure, your Honor, and the basis of my objection
11 is that the witness himself will testify -- and I think
12 has testified -- that he is absolutely not qualified
13 to give this testimony.

14 THE COURT: He didn't say that.

15 MR. CARLTON: He will. I will ask him
16 the question and he will say, "I'm not qualified and I
17 have no experience in voice" -- he just told us this.

18 THE COURT: You don't have to have experi-
19 ence. It's an opinion.

20 CARLTON: In Charizio, I believe, as I recall the
21 facts, there was a situation where there was a voice exem-
22 plar. This is not a voice exemplar where Mr. Drezin
23 gives a voice exemplar and then you compare it with some
24 other voice.

25 THE COURT: What you are saying here is

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Hoffman

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2 right along, they are the ones that are going to make
3 the identification and not this witness.

4 MR. CARLTON: I think that any instruction
5 by the court, no matter how diligently you make
6 this and how clear you make this instruction, they
7 cannot forget that Gustavo Hoffman, the court's
8 interpreter on several occasions came out and said
9 that that was the voice of the defendant Ruben Dario Rol-
10 dan, which was not even based upon a question that was
11 asked.

12 THE COURT: You have an exception.

13 MR. JACOBS: What was done here was to take
14 something away from the jury, a very important
15 issue, and pick somebody out, somebody who has a certain
16 aura that has been created about him because he is an
17 official interpreter in this court, and just plunked
18 him before the court as an expert. He's not. You
19 can tell the jury he's not an expert. But his testimony,
20 I fear, is going to be given far more weight than it should
21 to the prejudice of my client.

22 THE COURT: I will indicate to the jury,
23 as I told them before, this is only advisory to them and
24 not conclusive upon them. He's not an expert. He
25 simply has given an opinion like any person would give

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Hoffman

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2 an opinion and they are to give it whatever weight they
3 feel it would have. They are to make their own judgment,
4 and that's why the tape must be played, for them to hear
5 the intonation of the voice and to make their own judgment
6 as to whether in fact this is the same person.

7 MR. WARBURGH: I think your Honor answered
8 what we have been talking about for the last half
9 hour. The jury is going to listen to the tape.

10 THE COURT: That's what I said.

11 MR. WARBURGH: They will make their judgment.
12 So why do we need this testimony of the witness?
13 That's what our objection has been for the last
14 hour.

15 THE COURT: I realize that and I have
16 ruled on it. You have an exception to the court's
17 ruling.

18 (In open court.)
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THE COURT: The purpose for which you are going to listen to this tape is to make your own judgment as to whether or not the voice that appears on here is the same as the voice on another tape. You are the sole judges of whose voices these are. I have been telling you that from the beginning. Ever in the transcripts which you had in your hand, I warned you from time to time that those markings on the side couldn't bind you in any way whatsoever.

Now, the expression of opinion by Mr. Hoffman wasn't given as an expert but simply as an ordinary person who has listened to these the same way you have listened to them, except that you have listened to the tapes that we have here in the courtroom, and from those hearings and from hearing the intonation of the voices on those tapes you will make your judgment. Anything that Mr. Hoffman is saying to you or has said in this area is advisory only and not conclusive upon you.

You must make your own judgment on this after you hear the tapes themselves.

MR. CAREY: Your Honor, I understand that defense counsel request, with the consent of the government, the jury will only listen to this tape and not read the transcript along with it, is that right?

1 pga2

Hoffman-direct

2 THE COURT: Yes, and I limit it to that.
3 It is a legal matter and I have ruled on it.

4 So we now get to the question of voice
5 identification, Mr. Carey.

6 DIRECT EXAMINATION CONTINUED

7 BY MR. CAREY:

8 Q Mr. Hoffman, at my request yesterday and
9 today have you listened to a number of conversations?

10 A Yes, sir.

11 Q Would you please tell the jury what I asked
12 you to do at the time you listened to those conversations?

13 A You gave me a list of about eight or ten
14 conversations, two of which had positive, so-called
15 positive, identification of the --

16 MR. JACOBS: Objection and move to strike.

17 THE COURT: What was the identification?

18 THE WITNESS: The defendant Roldan iden-
19 tifies himself by name in conversations.

20 MR. JACOBS: I move to strike.

21 THE COURT: Does it say on the tape Dario
22 Roldan or just Dario?

23 THE WITNESS: It says Dario or Roldan.

24 Anyway, there were two conversations that Mr.
25 Carey asked me to use as a standard for comparing voices

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Hoffman-direct

with other conversations.

BY MR. CAREY:

Q Did you complete that comparison?

A Yes, sir.

Q Did you reach a conclusion as a result of
having made that comparison?

A Yes, sir.

Q What was your conclusion?

A That in my opinion --

MR. JACOBS: Objection.

THE COURT: Overruled.

A In my opinion, it was the same voice.

Q Do you remember the numbers and dates of those
particular conversations?

A No, sir.

Q I show you Government's Exhibit 545 for
identification. Can you identify that?

A Yes, sir.

Q How can you identify it?

A It's my handwriting.

Q What is that?

A It's a list of conversations, the numbers
and dates.

Q How does that list correspond with the testimony

1 pga4 Hoffman-direct

2 you have just given?

3 A That was the list I was referring to.

4 Q What did you find with respect to each
5 of those conversations?

6 A That one of the speakers in those conversations,
7 the voice sounded like the voice of the defendant Dario
8 Ruben in the two prototype tapes you gave me.

9 MR. JACOBS: Objection.

10 THE COURT: Sustained as to the manner
11 in which he is testifying.

12 You had two what you call samples or
13 using others to compare others with?

14 THE WITNESS: Yes.

15 THE COURT: What were the numbers of
16 those?

17 THE WITNESS: I don't have them.

18 Q Do you have on that list conversation No.
19 439 on May 16, 1974?

20 A Yes, sir.

21 Q Do you have on that list conversation No. 724
22 on May 26, 1974?

23 A Yes, sir.

24 Q Do you recall whether or not those are the
25 standards which you used for comparison?

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Hoffman-direct

2 A If I may see the list you have in your hand,
3 I think they are marked there.

4 MR. CAREY: This document is not marked.
5 May we have the court deem it marked 545A for identifi-
6 cation.

7 MR. CARLTON: Is that in his handwriting?

8 THE WITNESS: Yes, sir.

9 MR. CAREY: No, it is not.

10 Q Those were the two conversations?

11 A Yes.

12 Q Would you indicate that on this 545 by writing
13 the word abbreviation "Std" next to conversation?

14 A (Witness writes.)

15 MR. JACOBS: 439 or 437?

16 MR. CAREY: 439.

17 The government offers 545 for identification
18 into evidence.

19 THE COURT: I understand the jury would
20 like a recess.

21 Don't discuss the case in the meantime and
22 we will continue on in a few minutes.

23 (The jury left the courtroom.)

24 (Recess.)

25 (In open court, jury not present.)

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Hoffman-cross

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2 MR. TIRELLI: No questions.

3 MR. CUTLER: No questions.

4 MR. LEVENSON: No questions by me or Mr.
5 Washor.

6 MR. DIXON: No questions.

7 CROSS EXAMINATION

8 BY MR. JACOBS:

9 Q Mr. Hoffman, so we can be clear on this, you
10 testified on direct examination that you have no special
11 training in voice identification, is that correct?

12 A That's correct, sir. None whatsoever.

13 Q You have no greater expertise than any of
14 the people sitting in the jury box?

15 A No, sir.

16 Q And when for the first time were you asked
17 to identify Mr. Roldan's voice?

18 A Yesterday morning.

19 Q And who told you what conversations they
20 were?

21 A Mr. Carey.

22 Q Had you heard those conversations previous
23 to that?

24 A I had heard some of them, yes.

25 Q How many times did you listen to them yester-

1 mpa

Hoffman-cross

6476

2 day?

3 A Once.

4 Q Once?

5 A Yes.

6 Q Did you listen to them today at all?

7 A I listened to other conversations today.

8 Q No. I am talking about the conversa-
9 tions, and I will identify the numbers, 439, 724, 138,
10 297, 437, 480, 481, 552, 654 and 677.11 A I can't recall the numbers, Mr. Jacobs, but
12 I --13 MR. CAREY: Excuse me, Mr. Hoffman. Per-
14 haps Mr. Jacobs would like to have Government's Exhibit
15 545, which lists the conversations.16 Q I show you Government's Exhibit 545.
17 Does that help to refresh your recollection whether you
18 listened to any of the conversations listed on there
19 today?20 A Yes, I did, but I can't remember which num-
21 bers.

22 Q How many of them did you listen to today?

23 A Today I listened to about five or six of
24 them, and I listened to about four or five yeserday.

25 Q So that as to each conversation you listened

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Hoffman-cross

6477

1 to them only once, is that correct?

2 A That's correct.

3 Q Except for some that you may have heard in
4 the past?

5 A That's correct.

6 Q And when you heard it in the past it was for
7 the purpose of translating?

8 A That's correct.

9 Q Do you recall which of the ones on that list
10 you heard in the past for the purpose of translating?

11 A No, sir.

12 Q I show you a transcript of conversation
13 138 and ask you if you translated it.

14 A Yes, sir.

15 Q And do you recall how many times you listened
16 to it before you translated it?

17 A No, sir.

18 Q I show you transcript of conversation 297
19 and I ask you if you ever listened to this conversation
20 for the purpose of translating it?

21 A No, sir.

22 Q I show you conversation 437 and I ask you
23 if you ever listened to this for the purpose of trans-
24 lating?
25

2 A No, sir.

3 Q I show you conversation 439 and ask you if you
4 listened to this one for the purpose of translating.

5 A I can't tell you, sir.

6 Q I show you conversation 480 and ask you if
7 you listened to that for the purpose of translating.

8 A No, sir.

9 Q I show you conversation 481 and ask you if
10 you listened to that for the purpose of translating.

11 A No, sir.

12 Q I show you conversation 552 and I ask you
13 if you listened to that for the purpose of translat-
14 ing.

15 A No, sir.

16 Q I show you conversation 754 and ask you
17 if you listened to that for the purpose of translat-
18 ing.

19 A No, sir.

20 Q I show you conversations 677 and 724 and
21 I ask you if you listened to these two for the purpose
22 of translating them.

23 A Yes, sir.

24 Q So that you listened to four of these conversa-
25 tions, at least four of them, previously for the purpose
of translating them?

A Yes, sir.

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Hoffman-cross

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2 Q As to the four conversations that you listened
3 to previously for the purpose of translating them, prior
4 to yesterday had you informed Mr. Carey that they were the
5 same person in all four conversations?

6 A I don't think that question was ever asked of
7 me.

8 Q Well, did you ever inform him of that?

9 A No, sir.

10 Q As to at least five of these conversations,
11 you only heard them once; is that correct?

12 A That's correct.

13 Q And it is your testimony that the voices on
14 these various conversations were similar?

15 A Well, it is my humble opinion -- I should say
16 my very humble opinion, since I am not a voice expert --
17 that after listening to those conversations that Mr. Carey
18 asked me to listen to, I was left under the impression that
19 it was the same person.

20 Q Did you ever hear any voices similar to this on
21 tapes?

22 A Similar to which one?

23 Q You testified as to a number of tapes, the ones
24 I have just shown to you, and it is your opinion that the
25 voice is similar. Have you ever heard on tapes other

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Hoffman-cross

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2 voices that you find similar to this voice?

3 A Yes, sir.

4 Q Have you ever heard the voice of Marconi Roldan
5 on the tape?

6 A I don't remember.

7 Q Do you recall translating any tapes where the
8 person is referred to as Marconi?

9 A I think I did.

10 Q Did you find that voice similar to this voice?

11 A I don't remember that voice.

12 Q Did Mr. Carey ask you to listen to any tapes
13 of Marconi Roldan when you listened to these tapes yester-
14 day and today?

15 A No, sir.

16 Q Can you tell us what you find similar about
17 the voices?

18 MR. JACOBS: Withdrawn.

19 Q Do you find anything distinctive about the
20 voice?

21 A A few things that --

22 Q Tell us, please.

23 A I am just a layman. I cannot tell you in any
24 expert terms what are the similarities. As a layman I
25 listened to those conversations, and I am left under the

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Hoffman-cross

impression that it is the same voice.

Q Did Mr. Carey tell you why you were chosen for this task?

A No, sir.

Q Did you ask him why you were chosen for this?

A No, sir. I complained, but I didn't ask.

Q Did you tell Mr. Carey that you weren't qualified to do this?

A Yes, sir.

Q And what did he say?

A That my opinion was as good anybody else's who spoke Spanish and would be asked to identify the voices.

MR. JACOBS: No further questions.

MR. WARBURGH: No questions.

MR. KOEHLER: No questions.

MR. FABRICANT: No questions.

MR. CARLTON: No questions.

REDIRECT EXAMINATION

BY MR. CAREY:

Q Mr. Hoffman, Government's Exhibit 545 is a list you prepared which lists 10 conversations that you identified as being spoken by the same individual; is that correct?

A Yes, sir.

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Hoffman-redirect

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Q Now, when I asked you to listen to a number of tapes, did I ask you to listen only to those 10 conversations?

A No, sir.

Q How many conversations did I ask you to listen to?

A 17.

Q And with respect to the other seven conversations, is it your opinion that none of the individuals who spoke during those conversations were the same individuals who spoke in the 10 conversations where you identified the individual as Dario?

A That's correct.

MR. CARLTON: I think I would make the same objection.

THE COURT: Overruled.

MR. CAREY: I have no further questions.

MR. CARLTON: May I ask a question of Mr. Hoffman, please?

THE COURT: Yes.

RE CROSS EXAMINATION

BY MR. CARLTON:

Q Mr. Hoffman, in response to one of Mr. Jacobs' questions, you said you complained to Mr. Carey about it.

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Hoffman-recross

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Why did you complain about it?

A Because it is not a pleasant task to testify on matters on which I am not an expert.

MR. CARLTON: Thank you. No further questions.

THE COURT: Well, there were two voices on that one that you heard here in court, 439?

THE WITNESS: Yes, sir.

THE COURT: Which one did you identify as the one that is similar to the other ones?

THE WITNESS: Well, I think that's an outgoing call. The person who answered the call.

THE COURT: Did he describe himself by some name?

THE WITNESS: Yes. He described himself as Dario.

THE COURT: And that is the voice that you are talking about?

THE WITNESS: Yes.

THE COURT: Not the other voice that appears on there?

THE WITNESS: Yes, sir. That's correct.

MR. WARBURGH: Your Honor, may I ask a question, just to clear something up?

BY MR. WARBURGH:

Q Mr. Hoffman, did you say that the person who

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Hoffman-recross

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Q I don't know what the number is --

THE COURT: 439.

MR. CAREY: Your Honor, that is not 439.

I offered Mr. Warburgh a copy, but he doesn't want to use it.

MR. WARBURGH: Can't I use a Xerox copy of the same thing?

THE COURT: I don't know if it is a Xerox copy. 439 is what we are talking about. Use the same thing.

MR. WARBURGH: It appears to be the same. The Xerox I have appears to be the same.

MR. CAREY: Your Honor, I note that Mr. Warburgh has folded back the margin of part of the document that Mr. Hoffman prepared.

MR. WARBURGH: I have taken 15 minutes to explain --

THE COURT: Now, this is nonsense to me. It is perfectly clear to anybody in the courtroom that the voice he identified was Dario's voice, whether it was the caller or the callee or anybody else, and that's the only important thing in the matter.

Q Mr. Hoffman, did the person who answered the phone and said "Hello" identify himself as Dario? Look at anything you want to refresh your recollection.

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jbesb

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Now, where you have a situation where virtually the same case is before two judges, under the calendar rules it is the judge who has the senior case -- that is, the earliest in filing -- who carries forward and I have spoken to Judge Cannella and he has no objection to going forward with the case that is before him in the form in which it exists and with the expectancy that it will encompass, through the superseding indictment that is anticipated, the issues that are in 74 Cr. 939.

Consequently, it looks to me as though the motions this morning to strike the notice of readiness and dismissing the indictment because the Government is not ready and releasing the defendants on their own recognizance and dismissing the indictment in the interest of justice and other unspecified relief, all of those motions seem to me to be jumping the gun and getting away from what the situation of the case calls for.

MR. JACOBS: May I be heard? I am Howard Jacobs and I represent Mr. Roldan.

The problem that I have is we are told about an April 28th trial date and we have had no discovery. The Government has promised us for months --

THE COURT: Wait a minute. You are told about an April 28th trial date and you were supposed to go to

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2 trial before Judge Tyler on April 24th and the only thing
3 that has been delayed is the fact that he resigned and I
4 set the case for April 28th.

5 MR. JACOBS: Excepting, your Honor, that how can
6 we go to trial in a case which involves thousands --

7 THE COURT: If you need time to go to trial,
8 don't say the Government is slow about getting there. If
9 you need time, that is a separate consideration that I
10 ought to address myself to but if you are claiming time on
11 the one hand and saying that they are not proceeding on
12 the other hand, you are being inconsistent.

13 MR. JACOBS: Your Honor, I don't know if I need
14 time. The Government -- how can the Government be ready
15 for trial if they have not --

16 THE COURT: What concern do you have as to
17 whether they can or can't be ready for trial? They are
18 ordered to trial this month. They have filed a notice of
19 readiness and they say they are going to go.

20 Now, how can you resist that? You are telling
21 me now, now that the chips are down, you are not ready.

22 MR. JACOBS: There is a case that says that if
23 the Government says they are ready for trial and has not
24 filed a bill of particulars, which they are supposed to do,
25 there is a question as to whether they are ready for trial.

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2 In fact, because the Government files a piece of
3 paper and says they are ready for trial -- this was filed
4 two months ago --

5 THE COURT: Now, listen. It seems to me you are
6 talking on two sides of the same point.

7 What do you want? Do you want a bill of
8 particulars?

9 MR. JACOBS: I want the tapes, the transcripts,
10 all of the orders, everything that the Government has
11 promised all the attorneys in this case for months and
12 months and has never given to us.

13 MR. Carey has told me, at least five times,
14 "Next week, next week you will get it," and months have
15 passed, your Honor.

16 Now, are we to go to trial with that? The
17 Government to be ready has to prepare the case and furnish
18 the materials, I submit, to the defense counsel.

19 THE COURT: That would be a lawyer-like way of
20 being ready but if the Government says they are ready and
21 are not, in fact, in a lawyer-like fashion, who am I to say
22 that they shouldn't go?

23 You will be able to move to dismiss them if they
24 are not ready in the sense that you are trying to explain
25 it.

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2 MR. JACOBS: Can I explain --

3 THE COURT: What you are telling me is that they
4 don't know their business and if they say they are going
5 to go on without what you think they should have prepared
6 to go on for, why does that concern you? You will dismiss
7 them.

8 MR. JACOBS: What if on April 28th Mr. Carey
9 sits down at the table and has stacks and stacks of stuff
10 and says, "Defense counsel, you can now have it"? What
11 are we supposed to do at that point? What are we supposed
12 to do? The Government says, "We are ready, here it is."

13 THE COURT: I will tell you. You are not
14 supposed to play fast and loose with the trial. The point
15 is if you are not ready to defend and you can't foresee
16 that you will be ready to defend, I think it is up to you
17 to start asking for accommodation and if you don't ask for
18 it, I am just wondering whether you are adequately
19 representing your clients.

20 MR. JACOBS: I have a client who has been in jail
21 for six and a half months now, your Honor.

22 THE COURT: Please don't confuse the subject with
23 how long your client has been in jail. If you are telling
24 me that you haven't gotten the material, that is a
25 self-indictment on your part and what you better do is get

1 jbesb

2 about getting ready. Otherwise, your client will have a
3 complaint about you, both professionally and otherwise.

4 MR. JACOBS: Every lawyer in this case is in
5 the same position as I am.

6 THE COURT: I will talk to the other lawyers.
7 You talk for yourself.

8 Are you saying to me that you need something and
9 can't go to trial on April 28th? Is that what you are
10 saying to me?

11 MR. JACOBS: I don't know when I am going to get
12 it. If I have it tomorrow, I may be ready.

13 With regard to the April 28th date, I wrote to
14 Judge Tyler, I wrote to your --

15 THE COURT: Don't give me history. With regard
16 to the April 28th date, as of the present moment, you are
17 not ready for trial.

18 MR. JACOBS: I am starting a trial on April 21st
19 before Judge Lasker which is supposed to last two weeks.

20 THE COURT: Now you are coming out with the real
21 story. This is now beginning to jell a little bit in my
22 mind. You are going to be busy but you want to give them
23 the spear.

24 MR. JACOBS: No, your Honor. I made this motion
25 three times already, your Honor, long before --

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2 THE COURT: You are saying to me you are going to
3 be occupied on April 28th, aren't you?

4 MR. JACOBS: Yes, I am.

5 THE COURT: That means you can't go to trial on
6 April 28th. Now you are saying to me also that you
7 haven't adequately prepared the defense. Isn't that right?

8 MR. JACOBS: I have not been permitted to
9 adequately prepare the defense.

10 THE COURT: Whatever the reason is, we will find
11 the fault. You are not adequately prepared to defend.

12 MR. JACOBS: That's right.

13 THE COURT: And you can't go to trial on
14 April 28th.

15 MR. JACOBS: Because the Government has not
16 furnished us --

17 THE COURT: Now let's talk about fault about
18 getting you the material.

19 What about this material, Mr. Carey, what are
20 you stalling around about?

21 MR. CAREY: Your Honor, the Government has not
22 stalled in any fashion.

23 THE COURT: Why haven't they got the bill of
24 particulars and the tapes?

25 MR. CAREY: For the record, I will state neither

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2 Mr. Jacobs on behalf of his client nor Mr. Tirelli have
3 made any formal discovery motion for inspection or a
4 bill of particulars.

5 THE COURT: That settles that.

6 MR. CAREY: They have made informal motions for
7 discovery.

8 THE COURT: Motions or gestures?

9 MR. CAREY: Yes, sir, your Honor, and they have
10 repeated the requests and I have made promises that I would
11 deliver materials in the past based on my estimate of when
12 the Spanish interpreters -- and there are five of them
13 presently working for the Government -- would be complete
14 when their work.

15 THE COURT: Well, you have the tapes, haven't
16 you?

17 MR. CAREY: I do have tapes.

18 THE COURT: You can sit them down and make them
19 start listening five minutes from now, can't you?

20 MR. CAREY: That is true.

21 THE COURT: What you are saying to me is for
22 their accomodation, if they don't understand Spanish
23 adequately, you are preparing transcripts by or through
24 interpreters.

25 MR. CAREY: That's correct. All the work --

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2 THE COURT: There is no obligation on the part
3 of the Government to furnish a transcript. There is an
4 obligation to furnish the tapes.

5 MR. CAREY: That's correct, your Honor, and the
6 Government --

7 THE COURT: Now, as far as the transcripts are
8 concerned, it would be silly to go to trial without a
9 transcript for each individual; that's very clear, isn't it?

10 MR. CAREY: Yes, sir. The tapes are in Spanish,
11 your Honor.

12 THE COURT: Now, what particulars have they asked
13 for that you have informally said you would give them that
14 you haven't given them?

15 MR. CAREY: I don't believe there are any.

16 THE COURT: And when are you going to give them?

17 MR. CAREY: I don't believe there are any
18 particulars as Mr. Jacobs just indicated. The particulars
19 he is interested in are contained in the transcripts of
20 the tapes that he has not yet received.

21 Mr. Tirelli, on the other hand, has had the
22 opportunity and has already taken that opportunity in my
23 office to review the wiretap orders which were issued and
24 the affidavits for the orders for the wiretap in this case.
25 Mr. Jacobs has not taken that opportunity nor has he

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2 requested it.

3 THE COURT: And it is available to him?

4 MR. CAREY: It is.

5 THE COURT: It is available to him five minutes
6 from now and thereafter at his convenience?

7 MR. CAREY: Yes, it is, your Honor.

8 THE COURT: All right. Now that leaves the one
9 remaining thing in order to get this whole situation
10 clarified.

11 When is this work of art from the interpreters
12 going to emerge on paper so that they can read in English
13 what is on those tapes in Spanish?

14 MR. CAREY: Your Honor, my best estimate at this
15 time for the interpreters to finish proofreading already
16 typed transcripts--they have those transcripts that
17 require retyping and then to be Xeroxed by a firm that does
18 that for our office--we should get back the papers ready
19 for distribution by next Thursday, a week from today, your
20 Honor.

21 THE COURT: Why can't you today furnish to these
22 gentlemen an uncorrected copy without prejudice to what the
23 proofreading and the Xeroxing will do?

24 MR. CAREY: Your Honor, I am able to do that.
25 However, I submit that 90 percent of the documents they

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2 would receive would be illegible, because they are
3 handwritten in pencil by the interpreters.

4 THE COURT: But that is what you have today and
5 if they want to read the 10 percent, why shouldn't they
6 read it?

7 MR. CAREY: That's correct, your Honor.

8 THE COURT: So that you can immediately make
9 available to them what these interpreters have written
10 down, which is going to be typed out, I suppose.

11 MR. CAREY: Yes, your Honor.

12 THE COURT: And you can furnish it to them
13 without prejudice of any kind and with the understanding
14 that this is an uncorrected copy because it hasn't been
15 read against the tapes finally and will have to be typed
16 finally.

17 That can be done, can't it?

18 MR. CAREY: That's correct.

19 THE COURT: In other words, I want the Government
20 to make a show here that it is not just off in the wings
21 somewhere stalling around. I don't like this charge on
22 the part of the defendants that the Government is dragging
23 its feet and then hearing, all of a sudden, that the
24 lawyer is otherwise engaged on the date set for trial.

25 MR. TIRELLI: May I address the Court?

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